

MATERIAL TESTING SPECIAL INSPECTION SERVICES AGREEMENT FOR PAVILION POOL COVER

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the CITY OF LAS VEGAS, a municipal corporation within the State of Nevada (herein the "City") whose address is 400 Stewart Avenue, Las Vegas, Nevada 89101, and fax number is (702) 384-4846, and NINYO & MOORE, (the "Consultant"), a Corporation, whose address is 6700 Paradise Road Suite E, Las Vegas, NV, 89119, and fax number is (702) 433-0707.

WITNESSETH:

WHEREAS, the City intends to construct the Pavilion Pool cover (herein the "Project"); and

WHEREAS, the City desires to retain the Consultant who will be responsible for providing the professional services more fully described below and in the exhibits attached hereto; and

WHEREAS, the Consultant is properly licensed pursuant to NRS Chapter 623, 623A, or 625, whichever is legally required for the services to be provided within the State of Nevada, and possesses the special knowledge, skills and expertise to perform the services hereinafter set forth within the time required under this Agreement.

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree to the following terms, conditions and covenants set forth in Sections One through Ten hereof:

SECTION ONE CONSULTANT RESPONSIBILITIES

1.01 Description of Consultant's Services. For the compensation set forth in Section Seven, the Consultant hereby agrees to perform the basic services set forth in the Scope of Services, **Exhibit "A"** attached hereto and incorporated herein as a part of this Agreement and, if so requested, the additional services set forth in the Additional Compensation, **Exhibit "E"** attached hereto and incorporated herein as a part of this Agreement and to provide the submittals described in the Required Submittals **Exhibit "B,"** attached hereto.

1.02 Performance Standards. In performing the services set forth in this Agreement, the Consultant shall follow the practices consistent with the generally accepted standards in the profession of the services being provided to the City pursuant to this Agreement.

1.03 Document Review. The Consultant shall be responsible for reviewing each document prepared by the Consultant and its subconsultants including, without limitation, the plans, drawings and specifications for the purpose of ensuring that such documents are technically sound, in conformance with applicable federal, state and local laws and other regulations, and do not violate or infringe upon any patent rights.

1.04 Waiver. The City's approval of any documents or services furnished by the Consultant shall not in any way relieve the Consultant of responsibility for the professional and technical accuracy of its documents or services. The City's review, approval, acceptance or payment for any of the Consultant's services shall not be construed to operate as a waiver of any rights enjoyed by the City under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall remain liable for any damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Agreement.

1.05 Designation of Consultant's Representative. The Consultant's representative is the individual identified in the Key Personnel List, **Exhibit "F"** attached hereto (the "Consultant Representative") to act in that capacity, who shall be responsible for the services required under this Agreement. The services specified by this Agreement shall be performed by the personnel identified in the Key Personnel List provided that such associates and employees perform under the personal supervision of the Consultant Representative.

If any person or subconsultant who is expected to provide any of the services required under this Agreement is objectionable to the City for any reason, the Consultant shall, without additional compensation, replace such person or subconsultant with someone acceptable to the City.

If the Consultant's personnel are unable to complete their responsibilities for any reason under this Agreement, or the Consultant desires for any reason to substitute personnel assigned to the Project, the Consultant agrees to obtain the approval of the City for the substitution. The City shall not unreasonably deny approval unless the City adjudges the substitution not be in the interest of the City or the Project.

If the Consultant fails to make an acceptable replacement within thirty (30) days, the City may terminate this Agreement for default as provided in Section 10.03 of this Agreement.

1.06 Correspondence Review. The Consultant shall furnish the City Representative copies of each correspondence, if any, sent to any contractor involved with the Project, and to any regulatory agencies, for approval and review prior to mailing such correspondence.

1.07 Cooperation with the City. The Consultant agrees that its officers, associates, employees and subconsultants will cooperate with the City in providing the services under this Agreement and will be, with advance notice, available for consultation with the City at such reasonable times as to not conflict with the City's other responsibilities.

1.08 Responsibility for Construction Document Revisions.

A. Applicability. The Consultant's responsibility described in this Section applies only if the Consultant is responsible for providing a construction cost estimate and preparing construction documents for the Project.

B. Responsibility for Revisions. The Consultant does not warrant or represent that the bids or proposed price received by the City to construct the Project will come within the Construction Cost Budget set forth in the Scope of Services or as may be otherwise agreed upon in writing by parties. If the bids or proposed price received by the City exceeds the Construction Cost Budget, the Consultant agrees to cooperate with the City in revising the requirements of the Project as required to lower the cost to within the Construction Cost Budget and to modify the construction documents without additional compensation. In order to meet the Construction Cost Budget, the Consultant may, with the approval of the City, segregate portions of the work as separate alternate bid items so that bids received by the City to construct the Project will come within the Construction Cost Budget.

"Construction Cost Budget" as used herein means the monetary limit established by the City for construction of the Project which limit includes the cost of the contractor's labor, materials, equipment, expenses, overhead and profit, but excludes the Project's soft costs, cost of change orders and other cost impacts encountered after award of the construction contract.

SECTION TWO CITY RESPONSIBILITIES

2.01 City Representative. The Director of Public Works or his authorized representative identified in the Key Personnel List is hereby designated as the City's representative (the "City Representative") with respect to this Agreement. The City Representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services of the Consultant. The City Representative is not authorized to change or waive any of the provisions set forth in Sections 1.01 through 10.24 of this Agreement.

2.02 Review of Consultant's Services and Documents. The services to be performed by the Consultant shall be subject to periodic review by the City Representative. To prevent an unreasonable delay in the Project, the City Representative will endeavor to examine and comment in writing on the documents furnished by the Consultant including, without limitation, the plans, drawings, specifications, test results, evaluations, and reports within twenty-one (21) days of receipt of such documents, unless the Contract provides for a different review time with respect to the document.

2.03 Access to Records. The City shall, without charge, furnish a copy to, or make available for examination or use by, the Consultant, as it may request, any documents and data which the City has available including, without limitation, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, and other documents related to the services required under this Agreement. The City shall assist the Consultant in obtaining data and documents from public agencies and from private citizens and business firms whenever the City determines that such material is necessary for the completion of the services required by this Agreement.

2.04 Cooperation with Consultant. The City agrees that its officers and employees will cooperate with the Consultant in the performance of this Agreement and will be, with advance notice, available for consultation with the Consultant at such reasonable times as to not conflict with the Consultant's other responsibilities. The City shall provide access to the Consultant on to the Project site as may be required to perform the services under this Agreement.

SECTION THREE CHANGES TO CONSULTANT'S SERVICES

3.01 **Requested Changes.** The City may at any time, by written order, make a change in the services to be performed by the Consultant under this Agreement.

3.02 **Adjustment of Compensation.** If the change requested by the City causes an increase or decrease in the cost or time required to perform any of the services required under this Agreement, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section Seven, or in the performance schedule under Section Eight, or both, and this Agreement shall be modified in writing accordingly. Each claim for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of written notification of the change, unless the City grants in writing an extension. Provided proper notice has been given to the City as required herein, the claim for an adjustment shall be handled pursuant to the provisions of 10.20B and 10.20C of this Agreement. The failure to provide notification of the claim within the time required herein shall constitute a waiver of the right to seek any equitable or legal adjustment in compensation with respect to that change.

SECTION FOUR ADDITIONAL SERVICES OF CONSULTANT

4.01 **Additional Services.** The Consultant shall provide the additional services described in the Additional Compensation if, and only if, so requested in writing by the City. Payment for the additional services will be made to the Consultant in accordance with Section Seven of this Agreement.

4.02 **Attendance at Meetings or Public Hearings.** The Consultant shall notify the City in advance of any additional costs which may be incurred prior to attending any meetings or public hearings as may be necessary in connection with the services performed by the Consultant under this Agreement.

SECTION FIVE SUBCONSULTANT AGREEMENT

5.01 **Subconsultant Provisions.** If, with the approval of the City as required pursuant to Section 10.07, the Consultant enters into an agreement with a subconsultant for the performance of any of its obligations under this Agreement, the Consultant agrees to include in each subconsultant agreement a provision that:

(i) the Consultant agrees to pay the subconsultant when paid by the City for that portion of the services provided to the City and that no liability arises on the part of the Consultant for payment of the subconsultant services until payment has been made by the City. If the City has paid the Consultant for the subconsultant services, the subconsultant's only recourse is against the Consultant and not against the City, either through the institution of legal or equitable action or the attachment of any lien,

(ii) the subconsultant shall have no more rights against the City than that of the Consultant,

(iii) the subconsultant agrees to be bound by the terms, conditions and obligation of this Agreement unless the City has approved any deviation, change or modification in writing, and

(iv) unless otherwise approved in writing by the City Representative, the subconsultant shall obtain and maintain professional liability insurance (Errors and Omissions coverage) in connection with the subconsultant services in an amount equal to that required of the Consultant in this Agreement.

SECTION SIX TERM OF AGREEMENT

6.01 **Term.** This Agreement shall commence on the day it is approved by the City (which date shall be inserted in the introductory paragraph of this Agreement) and shall remain in force and effect until the Project is completed unless terminated earlier pursuant to Section 10.02 or 10.03 of this Agreement. Such termination shall not release either party from any of its continuing obligations under this Agreement.

6.02 **Disputes.** This Section shall not be construed to preclude the filing of any dispute arising out of the performance of this Agreement or in connection with the subject matter hereof, nor shall this Section be construed to change the date or the time on which a cause of

action arising out of the performance of this Agreement or in connection with the subject matter hereof, would otherwise accrue under the statutes of limitation or doctrines of law.

SECTION SEVEN COMPENSATION AND TERMS OF PAYMENT

7.01 Compensation: Basic Services. For the services to be performed by the Consultant under this Agreement and set forth in the Scope of Services, the City agrees to pay the Consultant the fee in the amount identified in the Fee Breakdown, **Exhibit "D"** attached hereto, pursuant to invoices submitted in accordance with Section 7.04 of this Agreement.

7.02 Compensation: Additional Services. For any services not set forth in the Scope of Services, the City shall pay to the Consultant either a lump sum fee, or an hourly fee based on the hourly labor rate schedule set forth in the Additional Compensation, whichever is agreed to by the parties, provided prior written approval for such services is given by the City Representative.

7.03 Compensation: Reimbursable Expenses. The Consultant agrees that all of its direct and indirect expenses are included in the fee for Basic Services and the agreed upon compensation for any Additional Services, except as may be specifically allowed for reimbursable expenses as part of the Additional Compensation.

7.04 Payment Invoicing. The Consultant may submit an invoice for payment for the services provided by the Consultant based on the manner or method of payment set forth in the Fee Breakdown. The City Representative will notify the Consultant of any problems regarding the invoice within fourteen (14) days from receipt thereof. If no response is received from the City Representative within the aforementioned period of time, the Consultant may expect payment within a period of (60) days from the date of receipt by the City. If payment has not been received within the sixty (60) days, the Consultant agrees to contact the City Representative to resolve the problem causing the delay. If resolution of the delay is not satisfactory to the Consultant, the Consultant may submit a claim pursuant to Section 10.20A of this Agreement.

7.05 Right to Off-Set. The City Representative may subtract or offset from any unpaid invoice from the Consultant any claims which the City may have for failure of the Consultant to comply with the terms, conditions or covenants of this Agreement, or any damages, costs and expenses caused by, resulting from, or arising out of the negligent act or omission of the Consultant in the performance of the services under this Agreement including, without limitation, any error or deficiency in the report or other documents prepared by the Consultant. The City Representative shall provide a written statement to the Consultant of the off-set which has been subtracted from any payment to the Consultant along with appropriate documentation and receipts, if any, and a description of the failure, error or deficiency attributed to the Consultant. If the Consultant disputes the right or amount of the off-set made by the City, the Consultant may file a claim pursuant to Section 10.20 of this Agreement.

7.06 Final Payment. Upon completion of the services required under this Agreement, and acceptance thereof by the City (which acceptance will not be unreasonably withheld), the Consultant will, within sixty (60) days of the City's acceptance, be paid the balance of any money due for such services.

SECTION EIGHT PERFORMANCE SCHEDULE

8.01 Performance Schedule. The Consultant shall perform and complete the services required under this Agreement according to the schedule (the "Performance Schedule") set forth in the Schedule of Performance, **Exhibit "C"** attached hereto. If the performance of services is delayed or submittals are not delivered in the time period as outlined in the Performance Schedule, the Consultant shall notify the City Representative in writing of the reasons for the delay and include a plan which brings the Consultant's performance into compliance with the Performance Schedule.

SECTION NINE AUDIT: ACCESS TO RECORDS

9.01 Records. The City shall have the right to audit the Consultant's books, records and other documents directly pertinent to the performance of this Agreement. The Consultant agrees to maintain books, records and other documents directly pertinent to performance of this Agreement in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used to prepare or support the invoices submitted to the City. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards, procedures and guidelines of the City, or its designated representative. The City, or its duly authorized representatives, shall have access to such books, records, and documents for the purpose of inspection, audit and copying. The Consultant will provide proper facilities for such access and inspection.

9.02 **Disclosure.** The Consultant shall be afforded the opportunity for an audit entrance and exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report, and that the final audit report will include the written comments, if any, of the Consultant.

9.03 **Period of Maintenance.** The books, records and other documents under Sections 9.01 and 9.02 of this Agreement shall be maintained for three (3) years after the date of the final payment for the services under this Agreement. In addition, those records and other documents which relate to any arbitration, litigation or the settlement of any claim arising out of this Agreement, or to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date that the arbitration, litigation or exception has been resolved.

9.04 **Subcontract Provisions.** The Consultant agrees to include Sections 9.01 through 9.03 of this Agreement in all its subcontracts directly related to performance of services specified in this Agreement which are in excess of \$10,000.

SECTION TEN MISCELLANEOUS PROVISIONS

10.01 **Suspension.** The City may suspend, without cause, the performance by the Consultant under this Agreement for such period of time as the City, in its sole discretion, may prescribe by providing written notice to the Consultant. The suspension shall be effective as of the date set forth in the written notice. With such suspension, the City agrees to pay to the Consultant the amount of compensation earned as of the effective date of suspension less all previous payments. The Consultant shall not provide any further services under this Agreement after the effective date of suspension until otherwise notified in writing by the City. In no event shall the City be liable to the Consultant for services in excess of the percentage completed at the time of suspension.

If, after notice to resume performance has been given by the City, the suspension was for a period in excess of ninety (90) days, which has resulted in an increase in the performance of the Agreement to the Consultant and:

- (i) the Consultant was not a contributing cause for the suspension,
- (ii) the Consultant has not received an equitable adjustment under another provision of this Agreement, and
- (iii) the Consultant could not mitigate the increase in the performance cost,

then the Consultant's fee shall be reviewed by the City and, if justified, equitably adjusted to provide for any additional expenses resulting from the suspension.

10.02. **Termination for Convenience.** The City reserves the right to terminate this Agreement without cause or default on the part of the Consultant with ten (10) days' prior written notification to the Consultant served pursuant to Section 10.18 of this Agreement. In the event of termination, without cause or default, the City agrees to pay to the Consultant the reasonable value for the services performed as of the date that notification of termination is received by the Consultant. In no event shall the City be liable to the Consultant for services in excess of the percentage completed at the time of termination.

10.03 **Termination for Cause or Other Resolution.**

A. Default. The occurrence of any of the following events shall constitute a default by the Consultant hereunder (herein "Event of Default"). If, during the term of this Agreement, the Consultant:

- (i) defaults in the due observance and performance of any term, condition or covenant contained in this Agreement,
- (ii) (a) voluntarily terminates operations or consent to the appointment of a receiver, trustee or liquidator of the Consultant for all or a substantial portion of its assets, (b) is adjudicated bankrupt or insolvent or files a voluntary petition in bankruptcy, or admits in writing to the inability to pay its debts as they become due, (c) make a general assignment for the benefit of creditors, (d) file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law, or (e) if action shall be taken by the Consultant for the purpose of effecting any of the foregoing,
- (iii) allows any warrant, execution or other writ to be issued or levied upon any property or assets of the Consultant which continues unvacated and in effect for a period of thirty (30) days, or
- (iv) fails, in the judgment of the City, to provide the services hereunder properly and with proper dispatch in accordance with the time schedule set forth in this Agreement,

and the default continues five (5) days after written notice is given to the Consultant pursuant to Section 10.18.

B. City's Rights. Upon the occurrence of an Event of Default, and without prejudice to any other right or remedy it may have at law or equity, the City may:

(i) terminate this Agreement, suspend payment of all pending invoices otherwise due to the Consultant hereunder, and finish this Agreement by such means as deemed appropriate by the City, reserving the right to deduct from any balance due Consultant the cost of completing this Agreement. In the event the cost of finishing the Consultant's performance of this Agreement exceeds the balance due the Consultant, the excess shall be paid by the Consultant to the City within five (5) days of invoicing by the City,

(ii) terminate this Agreement, and the obligations imposed hereunder, including the obligation of any further payment for the services of the Consultant except for the reasonable value for the services performed to the date of termination, or

(iii) Continue with performance by the Consultant and serve within a reasonable time after completion of the Agreement a request to arbitrate the Event of Default as a claim or dispute pursuant to the arbitration procedure set forth in Section 10.20.

In the event that the City elects to implement (i) above, the costs and expenses of completing this Agreement shall be computed and audited by the City's designated representative. The audit shall be conducted in accordance with generally accepted accounting principles and the cost thereof shall be paid by the Consultant.

10.04 Ownership of Documents.

A. Architectural Works. To the extent that the Consultant's services involves the design of an architectural work as defined herein, the Consultant shall retain all common law and statutory rights of ownership, including copyrights, to the drawings and specifications prepared by the Consultant for this Project. The Consultant is deemed to be the author of the drawings and specifications as instruments of service to the City. Notwithstanding the foregoing, the Consultant hereby grants to the City the right to use (including the right of reproduction and use in the creation of new documents) the drawings and specifications for the purpose of completing the Project or for any subsequent maintenance, repair, renovation, remodeling or addition thereto. The rights granted herein to the City shall extend and include any new consultant which the City may retain for the aforementioned purposes. The Consultant hereby releases the City, and any new consultant retained by the City for the aforementioned purposes, from any and all claims in connection with the use or reproduction of the drawings and specifications. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection.

B. Other Works. To the extent that the Consultant's services does not involve the design of an architectural work, the City shall have all common law and statutory rights of ownership, including copyrights, to the plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies, excepting any proprietary forms, templates, and checklists specifically listed for City ownership exclusion elsewhere in this Agreement) (collectively herein the "Documents") prepared or assembled by the Consultant, or any of its subconsultants, for this Project. The Consultant hereby releases the City, and any new consultant retained by the City from any and all claims in connection with the use or reproduction of the Documents. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection. The Consultant shall be entitled to retain a reproducible copy of the documents furnished to the City.

C. Definition of Architectural Work. For purposes of this Agreement, "architectural work" shall have the same definition as set forth in Architectural Works Copyright Protection Act of 1990, P. L. 101-650, Title VII, Section 70 et. seq.

D. Delivery of Documents. In the event of the completion, suspension or termination of this Agreement, the City shall have the right to require delivery of any and all of the plans, drawings, specifications, and all other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies), including the magnetic or electronic media of the aforementioned documents, not in the possession of the City.

E. Confidentiality. The plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies) (including the magnetic or electronic media of the aforementioned documents) which are prepared or assembled by the Consultant, or its subconsultants, under this Agreement shall not be made available to any individual or organization without the prior written consent of the City. Except for marketing pamphlets and submittals to clients, the Consultant shall not publish, submit for publication, or publicly display the Project without the written consent of the City. The obligations of confidentiality shall survive the termination of this Agreement.

F. **Contractual Rights.** Notwithstanding the provisions of 10.04 A above, the City is hereby licensed to use all design concepts developed by the Consultant and subconsultants under this Agreement, including the right to construct derivative works of the Project, and to use the design concepts for other projects of the City. The design concepts include, but are not limited to, the form, aesthetic appeal, site layout, the arrangement and composition of spaces and elements, the use of colors and materials, system designs, construction methods and interior design.

10.05 Insurance. The Consultant shall procure and maintain, at its own expense, during the entire term of the Agreement, the following insurances:

A. **Workmen's Compensation Insurance.** This insurance shall protect the Consultant and the City from employee claims based on job-related sickness, disease, or accident.

B. **Commercial General Liability Insurance.** This insurance shall protect the Consultant, its agents and vehicles used to provide the services required under this Agreement from claims of personal injury (including death) and property damage. Such coverage shall be in a minimum amount of \$1,000,000 for the period of time covered by this Agreement. The Consultant's general liability insurance policies shall be endorsed to include the City as an additional insured.

C. **Professional Liability Insurance (Errors and Omissions Coverage).** This insurance shall protect the Consultant from claims arising out of performance of professional services caused by a negligent act, error, or omission for which the insured is legally liable. Such coverage shall be in a minimum amount of \$1,000,000 for the period of time covered by this Agreement.

D. **Cancellation or Modification of Coverage.** The Consultant's Comprehensive General Liability and Professional Liability Insurance Policies shall automatically include or be endorsed to cover the Consultant's contractual liability to the City under this Agreement, and with respect to its Comprehensive General Liability Policy, to waive subrogation against the City, its officers, agents, servants and employees. The policies shall provide that the City will be given thirty (30) days' notice in writing of any cancellation of, or material change in, the policies.

E. **Certificates and Endorsements.** The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed \$25,000 without the written approval of the City. Certificates indicating that such insurance is in effect shall be delivered to the City before any services are provided under this Agreement.

F. **Period of Coverage.** If the insurance coverage is underwritten on a "claims made" basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state that coverage is "claims made" and the retroactive date. Upon availability, the Consultant shall maintain coverage for the duration of this Agreement and for two years following completion of this Agreement. The Consultant shall provide the City annually a Certificate of Insurance as evidence of such insurance.

10.06 Indemnity. Notwithstanding any of the insurance requirements set forth in Section 10.05, and not in lieu thereof, the Consultant shall defend, indemnify and hold the City, its officers, employees and agents (herein the "Indemnitees"), harmless from any and all claims (including, without limitation, patent infringement and copyrights claims), damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards or any other form of liability (including, without limitation, reasonable attorney fees and court costs) (collectively herein the "Claims") which the Indemnitees may suffer as a result of, by reason of, or as a consequence of, the negligent errors, omissions, recklessness, intentional misconduct of the Consultant, its subcontractors, agents or anyone employed by the Consultant, its subcontractors or agents, in the performance of this Agreement.

As part of its obligation hereunder, the Consultant shall, at its own expense, defend the Indemnitees against the Claims which may be brought against them, or any of them, as a result of, by reason of, or as a consequence of, the negligent act or omission of the Consultant, its subcontractors or agents, for and against which the Consultant is obligated to indemnify the Indemnitees, unless the Indemnitees, or any of them elect to conduct their own defense which, in such case, shall not relieve the Consultant of its obligation of indemnification set forth herein. If the Consultant fails to do so, the Indemnitees shall have the right, but not the obligation, to defend the same and charge the direct and incidental costs of such defense (including attorney fees and court costs) against the Consultant which is proportionate to the liability of the Consultant.

If the professional liability insurer of the Consultant does not so defend the Indemnitees and the Consultant is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees to be paid to the Indemnitees by the Consultant in an amount which is proportionate to the liability of the Consultant. As used in this Section, "agents" means those persons who are directly involved in and acting on behalf of the City in furtherance of this Agreement or the public work to which this Agreement pertains.

10.07 Assignment. The City and the Consultant each bind itself and its partners, successors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement, except the Consultant shall not assign, sublet or transfer any obligation or benefit under this Agreement without the written consent of the City. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

10.08 Waiver. No consent or waiver, express or implied, by either party to this Agreement, or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act, or failure to act of the other party, or to declare that other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection, payment, or tentative approval or acceptance by the City or the failure of the City to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release the Consultant of any of its obligations hereunder.

10.09 Consultant Warranties. The Consultant hereby represents and warrants that:

(i) it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is experienced, competent, qualified and able to furnish the plant, tools, materials, supplies, equipment and labor which is used to perform the services contemplated by this Agreement, and that it is authorized to do business in the City of Las Vegas and the State of Nevada,

(ii) it holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license,

(iii) its computer hardware, software, and firmware will continue functioning without interruption, and will continue to accurately process date, time, and data necessary to the performance of this Agreement, and

(iv) it has, pursuant to the requirements of Resolution 79-99 adopted by the City Council on August 4, 1999, (effective October 1, 1999), as amended by resolution 105-99 (adopted by the City Council on November 17, 1999), disclosed on the form attached hereto as **Exhibit "G"** (Disclosure of Ownership/Principals) all of the principals, including partners, of the Consultant, as well as all persons and entities holding more than a one percent (1%) interest in the Consultant or any principals of the Consultant. If the Consultant, or its principals or partners, are required to provide disclosure under federal law (such as Securities and Exchange Commission or the Employee Retirement Income Act) and current copies of such federal disclosures are attached to **Exhibit "G,"** the requirements of this Section shall be deemed satisfied. During the term of this Agreement, the Consultant shall notify the City in writing of any material change in the above disclosure on **Exhibit "G"** within fifteen (15) days of such change.

10.10 Consultant's Employees. The Consultant shall be responsible for maintaining satisfactory standards of competency, conduct and integrity, of personnel assigned to the Project, and shall be responsible for taking such disciplinary action with respect to such personnel as may be necessary. In the event the Consultant fails to remove any employee from the work of this Agreement whom the City deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the City to be contrary to the public interest, the City reserves the right to require such removal as a condition for the continuation of this Agreement.

10.11 Independent Contractor. It is hereby expressly agreed and understood that in the performance of the services required herein, the Consultant and any other person employed by him hereunder shall be deemed to be an independent contractor and not an agent or employee of the City.

10.12 Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada.

10.13 Compliance with Laws. The Consultant shall in the performance of its obligations hereunder comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Agreement including, without limitation, the Federal Occupational Health and Safety Act and all state and federal laws prohibiting and/or related to discrimination by reason of race, sex, age, religion or national origin.

10.14 Severability. In the event that any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain valid and binding on the parties hereto.

10.15 Confidentiality. The Consultant shall treat the information relating to the Project, which has been produced by the Consultant or provided by the City, as confidential and proprietary information of the City and shall not permit its release to other parties or make any public announcement or publicity release without the City's written authorization. The Consultant shall also require each subconsultant to comply with this requirement. The submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication relieving the Consultant of its confidentiality obligation imposed herein.

10.16 *Site Inspection.* The Consultant represents that it has visited the location of the Project and has satisfied itself as to the general condition thereof and that the Consultant's compensation as provided for in the Agreement is just and reasonable compensation for performance hereunder including reasonably foreseen and foreseeable risks, hazards and difficulties in connection therewith based on such above-ground observations.

10.17 *Modification.* All modification or amendments to this Agreement are null and void unless reduced in writing and signed by the parties hereto.

10.18 *Notice.* Any written notice required to be given under Sections 1.01 through 10.24 of this Agreement shall be deemed to have been given when the written notice is (i) received by the party to whom it is directed by personal service (ii) telephonically faxed to the telephone number set forth in the introductory paragraph to this Agreement, provided confirmation of the transmission is received by the sender, or (iii) deposited with the United States Postal Service, postage prepaid, addressed to the City Representative or the Consultant Representative, whomever is the proper recipient, and mailed to the address set forth in the introductory paragraph to this Agreement.

10.19 *Prohibition Against Contingent Fees.* The Consultant warrants that no person or entity has been employed or retained to solicit or secure this Agreement with the Agreement or understanding that a commission, percentage, brokerage or contingent fee would be paid to that person. For breach or violation of this provision, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the compensation to be paid to the Consultant, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10.20 *Claim or Dispute Resolution.*

A. *Notice of Claim or Dispute.* For each claim or dispute which the Consultant has against or with the City (except for any claim for an equitable adjustment under Section 3.02 which is subject to the 30-day limitation set forth therein), notice thereof must be submitted in writing to the City Representative within a reasonable time after the claim or dispute arises, but no later than thirty (30) days after final payment is made to the Consultant. The purpose of written notification is to place the City on notice so that proper measures can be taken to properly defend against the claim or dispute, and the failure to give such notice shall preclude the Consultant from subsequently arbitrating that particular claim or dispute pursuant to Section 10.20C of this Agreement, and the Consultant shall have no further recourse against the City. Pending a final decision on the claim or dispute under Sections 10.20B or 10.20C, the Consultant shall proceed diligently with the performance of this Agreement.

B. *Resolution by Management.* The City Representative and the Consultant Representative shall meet within a reasonable time after receipt of the written notice received pursuant to Section 10.20A in an attempt to resolve the claim or dispute to the mutual satisfaction of the parties. If the matter is not disposed of by mutual agreement between the City Representative and the Consultant Representative, the claim or dispute shall be decided by the Director of Public Works, whose decision shall be reduced to writing and mailed or otherwise furnished to the Consultant. The decision of the Director of Public Works shall be final and conclusive unless, within thirty (30) days after the date on which the Consultant receives its copy of such decision, the Consultant mails or otherwise furnishes to the Director of Public Works a written request to arbitrate the claim or dispute, in which event the parties shall proceed with the arbitration pursuant to provisions of Section 10.20B. The failure to make such request shall preclude the Consultant from proceeding any further on the claim or dispute, and the Consultant shall have no further recourse against the City.

C. *Resolution by Arbitration.* Upon receipt of the request to arbitrate authorized pursuant Section 10.03B or Section 10.20B, the City and the Consultant shall come to an agreement as to the appointment of an arbitrator for purposes of hearing the appeal. If the parties cannot reach an agreement, then each party shall select an arbitrator for purposes of the appeal, and the two shall select a third arbitrator within 20 days of their appointment. If the selected arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association or the Nevada Arbitration Association, whichever is designated by the City. Each party shall be afforded an opportunity to be heard and to offer evidence in support of or against the appeal. The decision of the arbitrator, or arbitrators, as the case may be for the determination of the appeal, shall be final, conclusive and enforceable under the laws of the State of Nevada.

D. *Right of Consolidation.* Any arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any additional party or parties who are not a party to this Agreement if so requested by the City or the Consultant. Any consent to arbitration involving an additional party or parties shall not constitute consent to arbitrate any claim or dispute not described as a part of the original arbitration unless otherwise agreed to by the parties.

E. *Right of Joinder.* In the event the City is named as a party to any arbitration, or the City commences an arbitration against a party other than the Consultant, which arbitration is related to, or connected with, the construction of the Project or the performance of the Consultant's services hereunder (such as, without limitation, any arbitration between the City and the contractor awarded the contract to construct the Project), the Consultant agrees and irrevocably consents to be joined as a party in the arbitration proceeding and to be bound by any decision

resulting therefrom. The decision of the arbitrator or arbitrators, as the case may be, in the arbitration to which the Consultant has been joined as a party, shall be binding and enforceable against the parties thereto under the laws of the State of Nevada.

If the Consultant is named as an additional party by the City, the Consultant shall not be entitled to any additional compensation from the City as a result of preparing for, and participating in, the arbitration.

F. **Discovery.** In the event of arbitration, the parties agree that all means of discovery including, but not limited to, depositions and interrogatories, will be afforded to the parties involved in the arbitration, and the appointed arbitrator shall have all authority to impose sanctions against either party for failing to comply with the rules of discovery provided under the Nevada Rules of Civil Procedure.

G. **Award Final.** The award rendered by the arbitrator shall be final, and judgment may be entered upon its accordance with applicable law in any court having jurisdiction thereof.

H. **Mediation.** Subsequent to the commencement of any arbitration pursuant to Section 10.20C, and prior to any decision arising therefrom, the parties may endeavor with written mutual consent to settle disputes by mediation in accordance with the mediation rules of the mediation service agreed by the parties. The cost of the mediation shall be shared equally by the parties.

10.21 Attorney Fees. The prevailing party in any litigation or arbitration brought to enforce the provisions of this Agreement shall be entitled to reasonable attorney fees and court costs.

10.22 Calendar Day. All references in this Agreement to days are to calendar days unless otherwise indicated.

10.23 Exhibits. All exhibits referenced in this Agreement are hereby incorporated by this reference as a part of this Agreement. Any conflict between the provisions of this Agreement and the Exhibits incorporated herein shall be governed by the provisions of this Agreement.

10.24 Counterparts; Electronic Delivery. This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

10.25 Agreement Version. This document incorporates the standard provisions for the City's Professional Services Agreement updated as of April 8, 2008.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.


CITY OF LAS VEGAS

By _____
Kathleen C. Rainey, Manager, Purchasing & Contracts


ATTEST

Beverly K. Bridges, CMC, City Clerk Date

APPROVED AS TO FORM

_____
Deputy City Attorney Date 8/31/09

CONSULTANT

By _____
Fintan L. Gaffney, Ninyo & Moore

LIST OF EXHIBITS

- EXHIBIT “ A ” SCOPE OF SERVICES**
- EXHIBIT “ B ” REQUIRED SUBMITTALS**
- EXHIBIT “ C ” PERFORMANCE SCHEDULE**
- EXHIBIT “ D ” FEE BREAKDOWN**
- EXHIBIT “ E ” ADDITIONAL COMPENSATION**
- EXHIBIT “ F ” KEY PERSONNEL LIST**
- EXHIBIT “ G ” DISCLOSURE OF OWNERSHIP/PRINCIPALS**

EXHIBIT "A"

SCOPE OF PROJECT. The scope and location of the Project is generally described as follows:

Site address: 101 S. Pavilion center Drive
Approximate gross site acreage: 4
Approximate gross building square footage: 26,000 S.F.
Offsite improvement area: 40,000 S.F.
Improvement description: New enclosure over the existing Pavilion Pool

GENERAL. If any Consultant proposal or other documents prepared by anyone other than the City is attached to this Agreement or included by reference herein, the terms of this Agreement shall govern any conflicts between the documents and this Agreement, and any such attachments shall only be utilized to compliment this Agreement in describing the detail of the scope of work described in this Agreement (except that under no circumstances shall the scope shall be limited to less than the requirements of the City of Las Vegas Department of Building and Safety), to avoid re-typing standard schedules of hourly rates for personnel, rates for material tests, and similar standard rate schedules. All other terms, conditions, and uses of any such attachments are to be ignored in connection with this Agreement, even if such attachments are signed by the parties to this Agreement.

By signing this Agreement, the Consultant warrants that it is accredited by the International Accreditation Service (IAS) as required by the regulatory authority for the scope of this Agreement. If the Consultant fails to maintain required accreditation during the term of this Agreement, the Consultant shall immediately notify the Owner in writing within three (3) working days of expired accreditation. Failure to maintain accreditation shall be deemed an event of Default under the provisions of Section 10.03 of the Agreement.

Testing and sampling operations shall be in accordance with recommended American Society for Testing Materials (ASTM) Standards and other standard testing methods and procedures, and as necessary to produce the information required for the reports. Report all laboratory determinations.

The Consultant, at no additional cost, shall properly retain samples for a period of one year after completion of the Project, and a longer period if so instructed by the City in which case reasonable storage charges shall be negotiated prior to the time extension, or the samples delivered to the City if charges cannot be negotiated.

REGULATORY AUTHORITIES. The Consultant does hereby acknowledge, understand and agree that the Office of Architectural Services, acting as the City's representative for purposes of the Project, does not have any control, authority or influence over the decisions or requirements of other departments of the City acting in a regulatory capacity including, but not limited to, the Building Department, Fire Department, Planning Department and Department of Public Works of the City of Las Vegas. The City's representative acts in a capacity similar to that of a representative working for a private property owner which is to ensure that the City receives a quality product, delivered on schedule, for a fair price. Furthermore, the Office of Architectural Services does not speak or act for any regulatory authority, nor does any regulatory authority speak or act for the Office of Architectural Services. The Consultant agrees that its relationship with the regulatory authorities having jurisdiction over the Project is separate from its relationship with the City, and that the Consultant's interaction with each regulatory authority is to be conducted without assistance from the City.

The Consultant acknowledges that they have thoroughly reviewed the scope of work of this Agreement with the City of Las Vegas Department of Building and Safety and all governmental regulatory authorities, have included all requirements of these authorities in the Fee shown in Exhibit "D", and hereby waives any right to claim additional compensation for any reason caused by these regulatory authorities.

CONTRACTOR. The Consultant does hereby acknowledge, understand and agree that the construction means, methods, and scheduling of the individual trades involved in the Project are under the control of the Contractor and not the City, and that the Consultant is required to coordinate with the Contractor in performance of this Agreement regardless of how the Contractor chooses to schedule the work, or what means and methods the Contractor chooses to utilize, and that the Consultant is experienced in the work of this Agreement and the type of construction shown in the Project documents, and that the Consultant has thoroughly reviewed all of the available documents for the Project, visited the site, and will perform the services of this Agreement without an increase in compensation from the City for any construction conflicts, problems or delays encountered in regard to the Contractor, subcontractors, workers, construction type, construction schedule, construction means and methods, site parking, site office, site utilities, and all other construction conditions that are under the control of the Contractor.

MEETINGS. The Consultant shall attend and participate in the Pre-Construction Conference with the Construction Contractor. The Consultant's team shall participate in periodic "Partnering Meetings" with the City and the Construction Contractor for discussion of shared goals, processes, and procedures during the construction process, which shall be attended by a Consultant team member who has high-level decision-making authority,

and require the same in all subconsultant contracts. Attend and participate in Construction Progress Meetings, weekly or more frequently as requested by the City. Meeting dates, times, and place will be determined by the City.

SPECIAL INSPECTION SCOPE OF WORK. The Consultant shall provide the complete scope of Special Inspection and testing services required by the City of Las Vegas Department of Building and Safety for the Project and any additional special inspection indicated in the Project drawings and specifications. The required scope of work, duties, responsibilities, and reporting submittals are contained in, but not limited to, the City of Las Vegas Department of Building and Safety Special Inspection Guidelines SI-1 form, the Special Inspection Agreement SI-3 form, the Scope of Work SI-6 form, the currently adopted version of the amended International Building Code including Chapter 17, the building permit drawing set for the Project stamped and noted by the Building Department and reserved for the on-site use of the Special Inspector, as well as all qualifying documentation, agreements, and requirements set forth between the City of Las Vegas Department of Building and Safety and the Consultant, the Consultant's subconsultants, and the individual professionals representing the Consultant. The work of the special inspector includes the observation of all testing required by the Building Department for the Project.

The scope of work also includes all necessary work in providing the following reports, as required and acceptable to the appropriate City of Las Vegas regulatory authorities:

1. Final Grading Report(s), On and off site.
2. Pad Certification Report(s), and Pad Re-certification Report(s) as required.
3. R-Value Verification Report for off-site construction.(no off site work anticipated, additional service if required)
4. Select Backfill Letter for off-site trenching backfill material.

The Consultant does represent that they are an Approved Special Inspection Agency as qualified by the City of Las Vegas Department of Building and Safety, and that they will remain so during the term of this Agreement. If the Consultant is removed from this qualified list, or otherwise limited in performing their duties and responsibilities under this Agreement, the Consultant does hereby agree to subcontract their responsibilities to a properly qualified consultant at no additional cost to the City. The City shall have the right to approve any such subconsultant prior to their use.

MATERIAL TESTING SCOPE OF WORK.

Material Testing Described in the Construction Contract Documents. In addition to the material testing included in the Special Inspection Scope of Work SI-6 form and as otherwise required by the City of Las Vegas Department of Building and Safety, the Consultant shall provide the following material testing for the Project, each of which is more fully described in the Project Documents:

1. Noted in exhibit "A" attached hereto
2. SI -6 testing requirements attached hereto not done by city forces.

Additional Testing NOT Described in the Construction Contract Documents. In addition to the material testing more fully described in the Project Documents, the Consultant shall also provide the following additional material testing:

1. Scope as noted in exhibit "D" additional services.

CONSULTANT REPORTING.

In addition to the reports required by the material testing sections of the Project Documents and the daily, weekly, and final report requirements for Special Inspection requirements by the City of Las Vegas, Department of Building and Safety, the Consultant shall immediately report verbally and in writing to the City Construction Project Representative any:

1. Testing or inspection that fails specifications or requirements (non-conforming items).
2. Missed testing or inspections, including periodic inspections when continuous was required.
3. Testing where there is a reasonable doubt that the future test results may not meet the specifications.
4. Construction that proceeds without the required testing or inspection.
5. Construction that proceeds after uncorrected failed test results or doubtful future results.
6. Construction that is not in compliance with the Project Documents.

7. Structural failure or collapse.
8. Disciplinary actions taken by the Building Department against the Consultant or Contractor.
9. Daily reports shall note the following minimum information for the City's use on each report:
 - a. Whether inspection was Continuous or Periodic.
 - b. Time Beginning Inspection.
 - c. Time Ending Inspection.
 - d. Total Hours spent inspecting for the day.
 - e. List of Non-conforming Items not yet corrected, inspected, and approved at the end of the day.

CONSULTANT LIMITATIONS.

The Consultant is NOT authorized to do any of the following:

1. To inspect or approve any work for which the building permit has not been issued;
2. To inspect or approve or otherwise authorize any work to commence before the Building Department has made the initial inspection;
3. To inspect or approve any work other than that for which they are specifically certified;
4. To accept alternative materials, structural changes, or revisions to plans without approval by the City and Building Department.
5. Any act or statement to the Contractor that leads the Contractor to claim a change in price or schedule.

RE-INSPECTION and RE-TESTING.

Re-inspection and re-testing services shall be considered Additional Services as provided for in this Agreement. The Additional Services requirement for pre-authorization in writing shall be waived for a re-inspection and re-testing if: 1) the re-inspection and re-testing is required by the Department of Building and Safety, and 2) it is not reasonable to require the pre-authorization without impacting the Project schedule, and 3) the Consultant provides itemized detailed records of the re-inspection and re-testing performed to the City and the Contractor within 24 hours of performing each service.

The Consultant agrees to cooperate with the Contractor in providing re-testing and re-inspection services as required by regulatory authorities and as requested by the Contractor, and to invoice the Contractor directly for such services no less frequently than monthly and at the same rates and conditions as the terms of this Agreement. Prior to providing each re-inspection and re-testing service, the Contractor shall sign a Consultant prepared notice stating that the re-inspection and re-testing is being performed at the request of the Contractor. If the Contractor refuses to sign any such notice or notes a disagreement on the notice along with the signature, the Consultant shall continue providing services as required by the "Continued Service" provisions of Exhibit "E", and should the disagreement be resolved in accordance with the provisions of this Agreement in favor of the Consultant, the City shall make a good faith effort to withhold such compensation from the Contractor and reimburse the Consultant. The City shall not be obligated to compensate the Consultant for such services if the re-inspection and re-testing service claim is invalid as defined herein.

The Consultant shall timely notify the City in writing should the Contractor fail to compensate the Consultant for any re-inspection and re-testing services, so that the City can make a good faith effort to withhold such compensation from the Contractor and reimburse the Consultant. Should the Consultant fail to provide such notification of non-payment to the City the earlier of: 1) 60 days after providing the service, or 2) 30 days after Substantial Completion of the Project excepting those services performed after Substantial Completion, the claim for such service shall be invalid and no compensation shall be paid to the Consultant.

Re-inspection and re-testing claims shall also be invalid and no compensation shall be paid to the Consultant if one or more of the following events occur: 1) the Consultant fails to note the circumstances and reasons for each failure to obtain the Contractor's signature on the notice requesting service in their itemized detailed records of the re-inspection and re-testing, or 2) the Consultant fails to provide records on a daily "as performed" basis or in sufficient detail to evaluate the claim, or 3) the need for such service is caused in whole or part by the actions or inactions of the Consultant, or the Consultant's failure to fulfill their duties with the Department of Building and Safety, regardless of whether such duties or failure is specifically referenced by this Agreement, or 4) the Consultant fails to either gain pre-authorization in writing by the City or fails to meet the conditions for waiver of the pre-authorization as provided for herein.

July 23, 2009
Proposal No. P-62286
Mr. Patrick Batte
City of Las Vegas Architectural Services
400 East Stewart Avenue
Las Vegas, Nevada 89101

Subject: Proposal for Special Inspection and Material Testing Services
Pavilion Pool Cover
101 South Pavilion Center Drive
Las Vegas, Nevada

Dear Mr. Batte:

Ninyo & Moore is pleased to submit our proposed scope of services and estimated fee to perform observation and materials testing services for the Pavilion Pool Cover project located at 101 South Pavilion Center Drive in Las Vegas, Nevada.

The purpose of our observation services will be to provide a senior inspector, to observe the progress, sequence and methods of day-to-day construction activities, to perform observation on grading activities, concrete reinforcement, structural concrete, structural masonry, and structural steel, to prepare daily reports and other related documentation, and to evaluate contractor compliance with the project geotechnical report, and the project plans.

The purpose of our material testing services will be to obtain samples and make field observations to evaluate the subgrade preparation, excavation, fill, aggregate base, and concrete and masonry, placed during construction of the project and associated improvements, and to evaluate if these items conform to the project plans.

SCOPE OF SERVICES

Our observation and material testing services will be performed in general accordance with City of Las Vegas Building Department requirements and the project plans. The scope of our proposed services include the following:

Performance of observation services by senior inspectors on an as-needed basis. Special inspection items may include but are not limited to grading and backfilling, reinforcement placement, concrete, masonry, structural steel, welding, and high-strength bolting.

Performance of periodic site visits by the Project Manager.

- Performance of laboratory tests on soil, aggregate, and concrete in our laboratory. These tests will include but are not limited to the following: maximum dry density and optimum moisture content, gradation, Atterberg limits, sulfate content, and compressive strength of concrete and masonry.
- Attendance at periodic meetings by the Project Manager.
- Preparation of daily field observation, field testing, and laboratory testing reports. These reports will be presented to the client or client's representative on an ongoing basis during construction operations.

Preparation of written reports stamped by a Nevada Registered Professional Engineer at the close of the project summarizing our observation and testing results.

TABLE 1 - BREAKDOWN OF ESTIMATED FEE

OBSERVATIONS AND TESTING				
Special Inspector	750 hours	@ \$	80.00 /hour	\$ 60,000.00
Sample pick-up (technician)	40 hours	@ \$	60.00 /hour	\$ 2,400.00
Principal Engineer	50 hours	@ \$	155.00 /hour	\$ 7,750.00
Final Grading Report	1 total	@ \$	1,500.00	\$ 1,500.00
Final Building Report	1 total	@ \$	1,000.00	\$ 1,000.00
Subtotal				\$ 72,650.00
LABORATORY TESTING				
Moisture Density Tests	2 tests	@ \$	165.00 /test	\$ 330.00
Sieve Analysis Tests	2 tests	@ \$	110.00 /test	\$ 220.00
Plasticity Index Tests	2 tests	@ \$	100.00 /test	\$ 200.00
Sulfate Content Tests	2 tests	@ \$	90.00 /test	\$ 180.00
Expansion Index	2 tests	@ \$	110.00 /test	\$ 220.00
Compressive Strength Concrete	50 samples	@ \$	20.00 /each	\$ 1,000.00
Compressive Strength Grout	12 samples	@ \$	20.00 /set	\$ 240.00
Compressive Strength Prisms (sets of 3)	6 prisms	@ \$	100.00 /prism	\$ 600.00
Subtotal				\$ 2,990.00
TOTAL FEE ESTIMATE				\$ 75,640.00

FEE

Our services, as described herein, will be performed on a time-and-materials basis not to exceed in accordance with the above Table 1., A breakdown of the estimated quantities, man hours, and tests is presented. We estimate that our fee for the scope of services described herein will be \$75,640 (Seventy-five Thousand Six Hundred Forty Dollars). It should be noted that our charges will be for the amount of time expended and number of tests actually performed on the project. If the fieldwork is completed in less time than anticipated or fewer tests are performed, a proportional reduction in personnel and equipment fees will be made. Should our services be utilized for longer than the time assumed to perform each task prior approval by the City of Las Vegas for any change order will be required (for example, due to extension of the estimated construction period), or for tasks not specifically outlined in this letter, our additional services will also be performed on a time-and-materials basis in accordance with the fees shown on the attached table as stated in Exhibit D of this agreement.

If you have any questions or comments concerning this letter, please contact us at your convenience.

Respectfully submitted,

Fintan L. Gaffney
Ninyo and Moore

End of Exhibit "A"

EXHIBIT "A" - ATTACHMENT

**SPECIAL INSPECTION AGREEMENT
(SI-3)**

To permit applicants of projects requiring special inspection and/or testing per Chapter 17 of the 2006 International Building Code (IBC)

Project Name/Address: PAVILION POOL, 101 S PAVILION CTR. DR. Plan Ck. # 176465-C-03
LAS VEGAS, NV 89144 Application # _____
Name of City of Las Vegas Inspection Supervisor: T. G. B. Telephone # 303-2290

BEFORE A PERMIT CAN BE ISSUED: The owner or owner's agent shall obtain special inspection services from a special inspection agency accredited by the International Accreditation Service (IAS) and approved by the Building Official. The owner or owner's agent shall complete two (2) copies of this agreement and the attached scope of work for special inspections.

APPROVAL OF SPECIAL INSPECTORS: Each special inspection agency shall be accredited by IAS and approved by the Building Official prior to permit issuance and prior to performing any duties. Special inspectors shall display approved identification, as stipulated by the Building Official, when performing the function of a special inspector.

Special inspection and testing shall meet the minimum requirements of IBC Chapter 17

All sections and chapters are from the 2006 International Building Code.

A. Duties and Responsibilities of the Special Inspector and Special Inspection Agency:

1. Observe work

The special inspector shall observe the work for conformance with the Building Department approved (stamped) design drawings and specifications and applicable workmanship provisions of the IBC.

2. Report non-conforming items

The special inspector shall bring non-conforming items to the immediate attention of the contractor and note all such items on the daily report. If any item is not resolved in a timely manner or is about to be incorporated in the work, the special inspector shall immediately notify the Building Department by telephone or in person, notify the engineer or architect, and post a discrepancy notice.

3. Furnish Daily reports

On request, each special inspector shall complete and sign both the special inspection record and the daily report form for each day's inspections to remain at the job site with the contractor for review by the Building Department's inspector.

4. Furnish weekly Reports

The special inspector or inspection agency shall furnish weekly reports of tests and inspections directly to the Building Department, project engineer or architect, and others as designated. These reports must include the following:

- Description of daily inspections and tests made with applicable locations;
- Listing of all non-conforming items;
- Report on how non-conforming items were resolved or unresolved as applicable; and
- Itemized changes authorized by the architect, engineer and building department if not included in non-conformance item.

5. Furnish final report

The Special Inspector or inspection agency shall submit a final signed report to the Building Department stating that all items requiring special inspection and testing were fulfilled and reported and, to the best of his/her knowledge, in conformance with the approved design drawings, specifications, approved change orders and the applicable workmanship provisions of the IBC. Items not in conformance, unresolved items or any discrepancies in inspection coverage (i.e., missed inspections, periodic inspections when continuous was required, etc.) shall be specifically itemized in his report. Final report shall be reviewed, signed and stamped by the principal of the special inspection agency who is a registered design professional (civil or structural engineer) in the State of Nevada.

Contractor's Responsibilities

1. Notify the special inspector

The contractor is responsible for notifying the special inspector or agency regarding individual inspections for items listed on the attached schedule and as noted on the Building Department approved plan. Adequate notice shall be provided so that the special inspector has time to become familiar with the project.

2. Provide access to approved plans

The contractor is responsible for providing the special inspector access to approved plans at the job site.

3. Retain special inspection records

The contractor is also responsible for retaining at the job site all special inspection records submitted by the special inspector, and providing these records for review of the Building Department's inspector upon request.

4. Seismic force resisting systems, designated system or component

Contractor's Statement of Responsibility per Section 1706 of the 2006 International Building Code, where required:

To comply with the requirements of Section 1706, the contractor acknowledges the following:

- The company is aware of the special requirements contained in the statement of special inspections prepared by the engineer of record or the registered design professional per the requirements of Section 1705 of the 2006 IBC.
- Control will be exercised to obtain conformance with the construction documents approved by the Building Official.
- The company has procedures for exercising control within our organization, the method and frequency of reporting and the distribution of reports.
- The company has the qualified personnel to exercise such control.

B. Engineer of Record's responsibilities:

1. Specify on the project plans and specifications all items requiring special inspections, including periodic inspections in accordance with Chapter 17.
2. Prepare a statement of special inspections, including seismic requirements, in accordance with Section 1705.
3. If structural observation is required per section 1709, and if owner hires the engineer of record, conduct structural observations. All final reports to be submitted to the Building Official.

C. Owner's responsibilities:

1. Obtain and fund special inspection services by contract with an agency approved by the City of Las Vegas.
2. Submit the signed SI-3 and SI-6 to the Building Official prior to permit issuance
3. Obtain and fund structural observation by engineer of record as required by Section 1709.

D. Scope of Work:

All work falling within the categories identified on the attached addendum (SI-6) shall be inspected and/or tested in accordance with the provisions of Chapter 17 of the International Building Code.

E. Some items noted in the project's scope of work, SI-6, are to be inspected by City of Las Vegas inspectors. Call 229-5112 to schedule these inspections. An inspection hold will be in place until these inspections are scheduled. Special inspection fees apply.

I have read and agree to comply with the terms and conditions of this agreement.

Owner: CITY OF LAS VEGAS
PATRICK BATTE

Date: 5-12-09

By: [Signature]

Print Name: PATRICK BATTE

Special Inspection Agency: NINYO + MOORE

Date: 9-1-09

By: [Signature]

Print Name: FINTAN L GAFFNEY

Contractor: _____

Date: _____

By: _____

Print Name: _____

Sub-consultant (if any): _____

Date: _____

By: _____

Print Name: _____

☒ Engineer of Record:
(Signature required if box is checked)

Date: _____

By: [Signature]

Print Name: GREGG MENDENHALL



May 12, 2009

CLV Dept. of Building & Safety

Development Services Center
Las Vegas, Nevada 89101

Attn.: Nenad Mirkovic

Project: Pavilion Pool Cover

Project#: 136465

Re: Special Inspection # 26733

Dear Nenad:

As discussed, this letter is to inform you that the City of Vegas is in the process of selecting a City approved Special Inspection Agency to fulfill all required third party structural inspection material testing services for the above referenced project.

It is understood that said agency and the most responsible bid Contractor will sign the Special Inspection Agreement prior to payment of fees and issuance of final building permit.

With exception of Special Inspection Agency and Contractor on board at this time, and that all other Structural plan review requirements have been approved, Public Works hereby requests that plans be stamped and cleared as permit ready.

Please advise if you have any further concerns

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Battle".

Patrick Battle
Arch. Project Mngr.

Cc:

DEPARTMENT OF
PUBLIC WORKS

OAS

OFFICE OF
ARCHITECTURAL
SERVICES

400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

TELEPHONE: (702) 229-6535
FAX: (702) 384-4846
TDD: (702) 386-9108

www.lasvegasnevada.gov

SPECIAL INSPECTIONS REQUIREMENTS (SI-2)
(Effective 04/14/2008)

To be Filled Out and Signed by Engineer of Record

Date 5/6/09 Contact _____
Name CRELL MENDENHALL
Project Name PAVILION POOL COVER Phone Number 702-367-6725
Project Address 101 SOUTH PAVILION CENTER DRIVE Plan Check / Application Number 136465

5. Seismic Design Category C
6. Per section 1707.1 and 1707.3 of 2006 IBC, special inspection is required for the structural wood elements of the seismic force resisting systems (shear walls, diaphragms, drag struts, braces, hold-downs), unless the fastener spacing of the sheathing is more than 4 inches. (Except Single Family Dwellings < or = 10,000 sq. ft.)
O Any fastener spacing < or = 4 inches? Yes _____ No X
7. Is Special Inspection required for this project? Yes X No _____
8. If Yes, please list below all items that require special inspections per chapter 17 of the 2006 International Building Code. This is required to be completed regardless of the items being on the plans.

SPECIAL INSPECTION ITEMS

- ☒ STEEL: S1, S1.1, S1.2, S2, S3, S4, S4.2, S6, S6.1, S7
☒ CONCRETE: C4, C9, C10
☒ MASONRY: M2
☐ _____
☐ _____
☐ _____
☐ _____
☐ _____
☐ _____
☐ _____
☐ _____
☐ _____
☐ _____
☐ _____
☐ _____
☐ _____

CRELL N. MENDENHALL
ENGINEER OF RECORD (NAME)

MENDENHALL SMITH
COMPANY NAME

5/6/09
DATE

[Signature]
SIGNATURE AND STAMP



Scope of Work
(SI-6) 2006 IBC

APPL/PERMIT # 136465
ADDRESS 101 S. PAVILION CENTER DRIVE

Includes all types of work listed under IBC Sections 1704 to 1714.

SIA = Special Inspection Agency to perform inspection

CLV = City of Las Vegas staff to perform inspection unless otherwise noted

To schedule CLV Express and Special Inspections, call 229-5112

NOTE: Items that are not checked but are applicable to the project shall have special inspections in accordance with Chapter 17 of the International Building Code

Req = Required inspection if marked with X

CLV	SIA	ITEM #	DESCRIPTION
	X	S	Steel Construction (Table 1704.3 & Section 1704.3)
	X	S1	Material verification of high strength bolts, structural steel, weld filler
	X	S1.1	Manufacturer's certificate of compliance
	X	S1.2	Manufacturer's certified mill tests reports
	X	S1.3	Identification markings
	X	S2	Welding (Section 1704.3.1, Table 1704.3 and AWS D1.1 and D1.3)
	X	S2.1	Structural steel
	X	S2.2	Reinforcing steel
	X	S3	Details of steel frames (Table 1704.3)
	X	S4	High strength bolting (Section 1704.3.3 and Table 1704.3)
	X	S4.1	Bearing type connections
	X	S4.2	Slip critical connections
		S5	Inspection of fabricator (shop and shop fabricated items per Section 1704.2)
	X	S6	Verification of approved fabricator
	X	S6.1	Fabricator's certificate of compliance
	X	S7	Bearing and base plate grouting
		S8	Non-destructive testing
	X	S9	Floor and deck welding
		S10	Welded studs for structural diaphragm
		S11	Welded sheet steel for cold-formed framing members
		S12	Welding of stairs and railing systems
	X	S13	Any other applicable items per Table 1704.3

CLV	SIA	ITEM #	DESCRIPTION
		S13.1	Steel Bar Joist Installation
	XX	C	Concrete Construction (Table 1704.4 & Section 1704.4)
	XX	C1	Materials
	XX	C2	Reinforcing steel and placement
	XX	C3	Pre-stressing tendons and placement
	XX	C4	Bolts in concrete
		C5	Concrete & Shot Crete and placement
		C6	Pre-stressed concrete
		C6.1	Pre-stressing forces
		C6.2	Grouting of bonded pre-stressing tendons in seismic force resisting systems
		C7	Erection of pre-cast concrete members
	XX	C8	Slab-on-grade, where required
	XX	C9	Verification of required design mix
	XX	C10	Concrete cylinders, slump, air, temperature
		C11	Curing
		C12	Verification of in-situ concrete strength
		C12.1	Prior to stressing of tendons
		C12.2	Prior to removal of shores and forms for beams and structural slabs
		C13	Formwork for shape, location and dimension of concrete member being formed
	XX	M	Masonry Construction (Section 1704.5)
	XX	M1	Level 1 Special Inspections (Table 1704.5.1 in Occupancy Categories I,II &III)
		M2	Level 2 Special Inspections (Table 1704.5.3 In Occupancy Category IV)
		W	Wood Construction (Section 1704.6)
		W1	Verification of approved fabricator for prefabricated wood structural elements.
		W2	High load diaphragms (sheathing, nailing, fastening, framing) Table 2306.3.2
	XX	G	Soils (Section 1704.7 and Table 1704.7 and soils report)
	XX	G1	Site preparation and sub-grade
	XX	G2	Fill placement, classification, testing (fill >12 in)
	XX	G3	In-Place density, materials and lift thickness, placement and compaction of controlled fill (fill >12 in)
	XX	G4	Excavation
	XX	G5	Special Excavation, grading and filling
		PL	Pile Foundations (Section 1704.8)
		PL1	Verify pile materials, sizes, length
		PL2	Verify capacities of test piles and any additional required load tests
		PL3	Verify placement locations, plumb
		PL4	Verify type and size of hammer

CLV	SIA	ITEM #	DESCRIPTION
		PL5	Record number of blows per foot of penetration
		PL6	Verify required penetrations to achieve design capacity
		PL7	Record driving operations with complete and accurate records for EACH pile, including any pile damage
		PL8	Verify tip and butt elevations
		PR	Pier Foundations (Section 1704.9 and Table 1704.9)
		PR1	Observe drilling operations and maintain complete and accurate records for EACH pier
		PR2	Verify placement locations and plumb-ness
		PR3	Confirm pier diameters, bell diameters, length, embedment, end bearing strata capacity
		PR4	Perform additional concrete inspections per section 1704.4 or masonry inspections per section 1704.5
		F	Sprayed Fire Resistant Materials (Section 1704.10)
		X	Special Cases: (Section 1704.13)
		X1	Rebar/Bolt/Threaded Rods/Anchors in epoxy grout (verify bolt or bar materials, hole depth and diameter, hole cleanout, epoxy mixing and placement, embedment depth and other requirements of ICC-ESR report and manufacturer's specifications) CLV Express Call 229-5112 to schedule
		X2	Hold-down substitution in tension
		X3	Rock retaining walls (Rock placement, rock size, footing, embedment, drainage, backfill, compaction, filter fabric, batter, slope and other items specified by engineer of record). Rammed Earth walls.
		X4	Expansion anchors / Concrete screw anchors (per ICC - ES reports)
		X5	Embedded plates
		X6	Others
		MS	Mastic and in tumescent fire-resistance coatings (Section 1704.11)
		EIFS	Exterior Insulation and Finish Systems (EIFS) (Section 1704.12) SI based on ICC - ES reports
		E	Special Inspections for Seismic Resistance (Section 1707)
		ES1	Structural steel (Section 1707.2)
		ES2	Structural welding (Section 1707.2)
		EW	Structural wood (Section 1707.3) Seismic Design Category C,D,E,F (except R-3 < or = 10,000 sq. ft.)
		EW1	Field Gluing
		EW2	Nailing, bolting, anchoring, fastening
		EW3	Drag struts
		EW4	Braces
		EW5	Hold-downs
		EW6	Shear walls and diaphragm nailing, anchoring, bolting and

CLV	SIA	ITEM #	DESCRIPTION
<input checked="" type="checkbox"/>			fastening (fastener spacing less than or equal to 4 inches)
<input checked="" type="checkbox"/>		EL	Cold formed steel framing for seismic force resisting system (Section 1707.4)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	EL1	Welding
<input checked="" type="checkbox"/>		EL2	Screw attachment, bolting, anchoring
		ER	Storage racks over 8 ft and access floors (Section 1707.6) in SDC D,E,F
		EV	Architectural components (Section 1707.7) For structures >30 ft high only in SDC D,E,F
		EV1	Exterior cladding (weight > 5 psf)
		EV2	Interior and exterior non-bearing walls (weight > 15 psf)
		EV3	Interior and exterior veneer (weight > 5 psf)
		EV4	Suspended Ceiling in Seismic design category D, E, F
		EME	Mechanical and electrical components (Section 1707.8)
		EME1	Electrical equipment anchorage for emergency systems in SDC C,D,E,F (Section 1707.8.1)
		EME2	Other electrical equipment in SDC E,F (Section 1707.8.2)
		EME3	Installation of piping systems with flammable, combustible or highly toxic materials in SDC C, D,E,F (Section 1707.8.3)
		T	Structural Testing for Seismic Resistance (Section 1708)
		T1	Engineered Masonry level 1 (Section 1708.1 & Table 1708.1.2)
		T2	Engineered Masonry level 2 (Section 1708.1 & Table 1708.1.4)
		T3	Testing for seismic resistance
		T3.1	Seismic force resisting systems in SDC C,D,E,F
		T3.2	Designated systems in SDC D,E,F
		T4	Reinforcing and pre-stressing steel (Section 1708.3)
		T4.1	Certified mill tests
		T4.2	Chemical tests for weld ability
		T5	Structural steel (Section 1708.4 and AISC 341)
		T5.1	All testing as required by AISC 341
		T5.2	Non-destructive testing (AWS D1.1). Acceptance criteria for NDT to be specified by engineer of record
		T5.3	Others
		T6	Mechanical and Electrical Equipment Seismic Qualification Testing (Section 1708.5)
		T6.1	Manufacturer's certificate of compliance on anchorage
		T6.2	Inspection of anchorages and labels
		A	Amusement Rides
		A1	Construction inspection and testing
		A2	Operation and maintenance inspection and testing

CLV	SIA	ITEM #	DESCRIPTION
		A3	Non-destructive testing
		Z	Other Inspections and Tests
		Z1	Exterior windows and door assemblies (Section 1714.5) Testing & Labeling
		Z2	Alternative tests (Section 1711)
		Z3	In-situ load tests (Section 1713)
		Z4	Pre-construction load tests (Section 1714)

- Statement of special inspections specified by Engineer of Record (Section 1705 Yes or No

- Is Structural Observation by a Registered Design Professional Required? (Section 1709) Yes or No

All continuous inspections and periodic inspections shall be in accordance with 2006 IBC, Chapter 17.

EXHIBIT "B"

For the services set forth in Exhibit "A" (Scope of Services), the Consultant shall deliver the following minimum submittals and deliverables for the Project, which shall be accomplished as a prerequisite to payment for each service.

SPECIAL INSPECTION. Provide reports and other submittals as required by the Building Department. Provide one (1) duplicate copy concurrent with each Building Department submittals to the City Construction Project Representative, stamped, signed and dated by the licensed engineer of record.

MATERIAL TESTING. Five (5) copies of any reports, stamped, signed and dated by the licensed engineer of record.

All reports shall be on white paper, 8-1/2 x 11 inches, suitable for photocopying and bound in booklet form.

Monthly Report: The consultant shall submit monthly reports certifying that all sampling and testing procedures have been performed in accordance to accepted industry standards.

Final Report: The Consultant shall submit a final report containing all test results.

It is understood that the City may produce and distribute copies of the reports as necessary in connection with the Project without incurring obligation for additional compensation.

END OF EXHIBIT "B"

EXHIBIT "C"

For the services set forth in Exhibit "A" (Scope of Services), the Consultant shall accomplish the services in accordance with the following schedule:

Subject to any limitations stated in the Consultant's proposal, the specified services shall be completed as the Project progresses and reports delivered to the City within Thirty (30) calendar days of the inspection and testing, barring circumstances beyond the Consultant's control that force a delay.

The Consultant shall respond to a request to perform an inspection or test within Twenty Four (24) Hours from the time the request is received from the City's Construction Project Representative.

The start date for the Consultant's scope of services shall be, without any further notice requirement, the date of this Agreement.

The Consultant shall have in his possession a cellular phone and city phone numbers from which he may be contacted or may contact the City's Construction Project Representative while on-site.

Site access is hereby provided to the Consultant by the City for the scope of services contained in this Agreement. The City either has title to the property and the right of entry, or the City has secured permission from the present owner and tenant for entry to the property. The Consultant shall coordinate site access with any contractors working on site.

The Consultant shall provide the required services until the Project is completed. Except as provided for in Paragraph 10.01 Suspension, additional compensation shall not be allowed should the completion date of the Project extend beyond the completion date anticipated.

END OF EXHIBIT "C"

EXHIBIT "D"**TOTAL COMPENSATION**

The total compensation to be paid to the Consultant for performance of this Agreement including Basic Services, Additional Services, and Reimbursable Expenses shall not exceed \$79,900. Increases to total compensation may only be authorized by written amendment to this Agreement. This total compensation amount is comprised of the parts described in this Exhibit "D" (Fee Breakdown).

BASIC SERVICES PAYMENT BASED ON HOURLY RATES AND TESTING RATES WITH A TOTAL NOT-TO-EXCEED COST

For the services set forth in Exhibit "A" (Scope of Services), the City agrees to pay to the Consultant based upon the Consultant hourly rates and testing rates established in the Consultant's attached proposal dated July 23, 2009 based upon the completed and approved services performed for the prior month. The Consultant agrees to perform the services required under this Agreement Exhibit "A" (Scope of Services) for no more than the amount of the Total Not-to-Exceed Cost set forth in this Exhibit "D" (Fee Breakdown). Payment shall be made pursuant to monthly invoices submitted in accordance with the Agreement. The Total Not-to-Exceed Cost shall constitute the maximum compensation to be paid to the Consultant regardless of the number of man-hours actually expended to complete the performance of the services set forth in Exhibit "A" (Scope of Services).

SERVICE	NOT-TO-EXCEED COST	REMARKS
Observations and Testing	72,6500.00	Inspections, material pickup from site and reports.
Laboratory Testing of materials	\$2,990.00	Various materials testing with lab equipment off site.
	\$0.00	
	\$0.00	
	\$0.00	
TOTAL NOT TO EXCEED COST	\$75,640	

The amounts shall not be shifted between the Not-to-Exceed Cost for each service shown above unless the City Representative so authorizes in writing.

ALLOWANCE FOR ADDITIONAL SERVICES

A Not-To-Exceed Allowance for Additional Services is hereby established as set forth below. The City Representative has authority to pre-authorize in writing Additional Services up to the Total Not-To-Exceed Cost. Services performed prior to receiving the required written authorization or in excess of the Total Not-To-Exceed Cost shall not be obligated for compensation.

Additional Services are services that are not set forth in Exhibit "A" (Scope of Services).

The Consultant shall be compensated for Additional Services in accordance with the Additional Services fees set forth in Exhibit "E" (Additional Compensation), or if no Additional Service fee has been established for the service, in accordance with the Consultant Hourly Rates established in Exhibit "E" (Additional Compensation). Additional Service compensation disputes shall be resolved in accordance with the claims and disputes provisions of this Agreement and shall not be cause for the Consultant to delay providing requested services. Payment shall be made for each completed Additional Service pursuant to invoices submitted in accordance with the Agreement.

Continued Service. If a fee cannot be negotiated for Additional Services required by the Department of Building and Safety, or some other disagreement arises between the parties to this Agreement, or other event occurs that threatens to disrupt the Project schedule, regardless of the causes, the Consultant agrees to act in the best interest of the Project and to timely perform services as may be required by the Department of Building and Safety, independent of any dispute or claim, which shall be resolved in accordance with the terms of this Agreement.

Records. The Consultant shall maintain and provide to the City itemized detailed records for each Additional Service including the names of personnel, date and hours worked, tasks completed, area of the Project under construction, scope of work on the SI-6 form as appropriate to the service, whether the service required a special trip to the site or was performed in addition to already scheduled on-going work on the site, and other information as may reasonably be required by the City to properly evaluate the services performed. In addition, to evaluate Additional Services provided or claimed, the City may require the Consultant to provide this same level of detail for other work being performed by the Consultant concurrent with, adjacent to, or otherwise related to the Additional Services under consideration.

Increases to this Total Not-To-Exceed Cost for Additional Services may only be authorized by written amendment to this Agreement.

ADDITIONAL SERVICES ALLOWANCE		ALLOWED SERVICES
TOTAL NOT-TO-EXCEED COST	\$4,260.00	Additional laboratory material testing, observations and testing, due to unforeseen site and building conditions needed to comply with engineering, structural, code recommendations and approvals. Additional boiler replacement inspection, testing, and reports if required. Special inspection requirements for: Building and Safety code compliance, engineering and owner's recommendations. Additional services scope is based on tasks and rates listed on consultants proposal table 1 and exhibit E.

END OF EXHIBIT "D"

EXHIBIT "E"

CONSULTANT HOURLY RATES

The following hourly rates are to be used as the basis for negotiation of added and reduced services. These hourly rates are valid for the duration of the Project and include salary costs, overhead, administration and profit. The overhead included in these rates covers all support personnel who normally work on non-specific project tasks including but not limited to receptionists, senior executives together with their assistants, financial accounting personnel, and facility, equipment, and IT maintenance personnel.

CLASSIFICATION		
Special Inspector	\$80	Per Hour
Principal Engineer	\$155	Per Hour
Sample pick up technician	\$60	Per Hour

Material Testing Rates Refer to testing rates listed in Exhibit "d" that are to be used as the basis for negotiation of added and reduced services. These rates are valid for the duration of this Agreement and include labor costs for the test, equipment, overhead, administration and profit.

REIMBURSABLE EXPENSES

For Reimbursable Expenses of the Consultant, the City shall compensate the Consultant a multiple of **one and one tenth (1.10)** times the actual direct costs incurred by the Consultant. The multiplier includes all compensation for overhead and profit.

Reimbursable Expenses are limited to specific pre-authorized items or services purchased from third parties to this Agreement, dedicated to only this Project. Additions to the above allowed Reimbursable Expenses may only be granted as a written amendment to this Agreement.

None authorized or anticipated as of the date of this Agreement. If the City requests additional copies of any reports beyond those required by this Agreement, they shall be considered a Reimbursable Expense.

END OF EXHIBIT "E"

EXHIBIT "F"

CITY PERSONNEL

CITY REPRESENTATIVE: Patrick Batte

CONSTRUCTION PROJECT REPRESENTATIVE: Ken Katora

CONSULTANT'S PROJECT STAFF

The following personnel will be assigned by the Consultant to work on the Project. Any changes require City approval.

CONSULTANT REPRESENTATIVE: Fintan Gaffney

ENGINEER OF RECORD: Fintan Gaffney

CONSULTANT'S SUBCONSULTANTS

The following subconsultants will be contracted with and utilized by the Consultant to work on the Project. Any changes require City approval.

None.

END OF EXHIBIT "F"